



March 18, 2005

ENGROSSED

SENATE BILL No. 206

DIGEST OF SB 206 (Updated March 15, 2005 4:38 pm - DI 77)

Citations Affected: IC 12-9; IC 16-18; IC 16-27; IC 22-1; IC 25-22.5; IC 25-23; IC 25-26; noncode.

Synopsis: Home services. Establishes a program for the licensing and regulation of personal services agencies. Provides that home health agencies and personal services agencies are approved to provide home health or personal services under certain federal waivers. Provides that home health services includes services that are required to be ordered or performed by certain health care professionals. Increases the home health agency license fee. Requires a personal services agency to comply with employee criminal history check requirements. Provides that a home health agency that operates a personal services agency is not required to obtain a license to operate the personal services agency. Makes operating or advertising an unlicensed personal services agency a Class A misdemeanor. Requires a placement agency to provide the consumer and worker with certain information when a home care services worker is placed in the consumer's home. Allows the state department of health to impose civil penalty against a placement agency for failing to provide the notice. Relocates the definition of "attendant care services". Requires a home medical equipment services provider to be licensed by the board of pharmacy. Authorizes the board to conduct inspections, issue licenses, discipline providers for violations, and adopt rules to: (1) specify the equipment to be regulated; (2) set standards for the licensure of services providers; (3) govern the safety and quality of services that are provided; (4) recognize certain accredited individuals for purposes of issuing a temporary license; and (5) set reasonable fees for the application, issuance, and renewal of a license. Makes conforming changes.

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Effective: July 1, 2005.

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(HOUSE SPONSORS — LEHE, RESKE)

January 4, 2005, read first time and referred to Committee on Health and Provider Services.

February 10, 2005, amended, reported favorably — Do Pass.

February 15, 2005, read second time, amended, ordered engrossed.

February 16, 2005, engrossed.

February 17, 2005, read third time, passed. Yeas 48, nays 2.

HOUSE ACTION

March 8, 2005, read first time and referred to Committee on Public Health.

March 17, 2005, amended, reported — Do Pass.

ES 206—LS 7019/DI 110+



March 18, 2005

First Regular Session 114th General Assembly (2005)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2004 Regular Session of the General Assembly.

ENGROSSED SENATE BILL No. 206

A BILL FOR AN ACT to amend the Indiana Code concerning professions and occupations.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 25-22.5-1-2 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 2. (a) This article, as it
3 relates to the unlawful or unauthorized practice of medicine or
4 osteopathic medicine, does not apply to any of the following:

5 (1) A student in training in a medical school approved by the
6 board, or while performing duties as an intern or a resident in a
7 hospital under the supervision of the hospital's staff or in a
8 program approved by the medical school.

9 (2) A person who renders service in case of emergency where no
10 fee or other consideration is contemplated, charged, or received.

11 (3) A paramedic (as defined in IC 16-18-2-266), an emergency
12 medical technician-basic advanced (as defined in
13 IC 16-18-2-112.5), an emergency medical technician-intermediate
14 (as defined in IC 16-18-2-112.7), an emergency medical
15 technician (as defined in IC 16-18-2-112), or a person with
16 equivalent certification from another state who renders advanced
17 life support (as defined in IC 16-18-2-7) or basic life support (as

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defined in IC 16-18-2-33.5):

(A) during a disaster emergency declared by the governor under IC 10-14-3-12 in response to an act that the governor in good faith believes to be an act of terrorism (as defined in IC 35-41-1-26.5); and

(B) in accordance with the rules adopted by the Indiana emergency medical services commission or the disaster emergency declaration of the governor.

(4) Commissioned medical officers or medical service officers of the armed forces of the United States, the United States Public Health Service, and medical officers of the United States Department of Veterans Affairs in the discharge of their official duties in Indiana.

(5) An individual who is not a licensee who resides in another state or country and is authorized to practice medicine or osteopathic medicine there, who is called in for consultation by an individual licensed to practice medicine or osteopathic medicine in Indiana.

(6) A person administering a domestic or family remedy to a member of the person's family.

(7) A member of a church practicing the religious tenets of the church if the member does not make a medical diagnosis, prescribe or administer drugs or medicines, perform surgical or physical operations, or assume the title of or profess to be a physician.

(8) A school corporation and a school employee who acts under IC 34-30-14 (or IC 34-4-16.5-3.5 before its repeal).

(9) A chiropractor practicing the chiropractor's profession under IC 25-10 or to an employee of a chiropractor acting under the direction and supervision of the chiropractor under IC 25-10-1-13.

(10) A dental hygienist practicing the dental hygienist's profession under IC 25-13.

(11) A dentist practicing the dentist's profession under IC 25-14.

(12) A hearing aid dealer practicing the hearing aid dealer's profession under IC 25-20.

(13) A nurse practicing the nurse's profession under IC 25-23. However, a registered nurse may administer anesthesia if the registered nurse acts under the direction of and in the immediate presence of a physician and holds a certificate of completion of a course in anesthesia approved by the American Association of Nurse Anesthetists or a course approved by the board.

(14) An optometrist practicing the optometrist's profession under

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- 1 IC 25-24.
 2 (15) A pharmacist practicing the pharmacist's profession under
 3 IC 25-26.
 4 (16) A physical therapist practicing the physical therapist's
 5 profession under IC 25-27.
 6 (17) A podiatrist practicing the podiatrist's profession under
 7 IC 25-29.
 8 (18) A psychologist practicing the psychologist's profession under
 9 IC 25-33.
 10 (19) A speech-language pathologist or audiologist practicing the
 11 pathologist's or audiologist's profession under IC 25-35.6.
 12 (20) An employee of a physician or group of physicians who
 13 performs an act, a duty, or a function that is customarily within
 14 the specific area of practice of the employing physician or group
 15 of physicians, if the act, duty, or function is performed under the
 16 direction and supervision of the employing physician or a
 17 physician of the employing group within whose area of practice
 18 the act, duty, or function falls. An employee may not make a
 19 diagnosis or prescribe a treatment and must report the results of
 20 an examination of a patient conducted by the employee to the
 21 employing physician or the physician of the employing group
 22 under whose supervision the employee is working. An employee
 23 may not administer medication without the specific order of the
 24 employing physician or a physician of the employing group.
 25 Unless an employee is licensed or registered to independently
 26 practice in a profession described in subdivisions (9) through
 27 (18), nothing in this subsection grants the employee independent
 28 practitioner status or the authority to perform patient services in
 29 an independent practice in a profession.
 30 (21) A hospital licensed under IC 16-21 or IC 12-25.
 31 (22) A health care organization whose members, shareholders, or
 32 partners are individuals, partnerships, corporations, facilities, or
 33 institutions licensed or legally authorized by this state to provide
 34 health care or professional services as:
 35 (A) a physician;
 36 (B) a psychiatric hospital;
 37 (C) a hospital;
 38 (D) a health maintenance organization or limited service
 39 health maintenance organization;
 40 (E) a health facility;
 41 (F) a dentist;
 42 (G) a registered or licensed practical nurse;

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- (H) a midwife;
- (I) an optometrist;
- (J) a podiatrist;
- (K) a chiropractor;
- (L) a physical therapist; or
- (M) a psychologist.

(23) A physician assistant practicing the physician assistant's profession under IC 25-27.5.

(24) A physician providing medical treatment under IC 25-22.5-1-2.1.

(25) An attendant who provides care services (as defined in ~~IC 16-27-1-0.5~~; **IC 16-18-2-28.5**).

(26) A personal services attendant providing authorized attendant care services under IC 12-10-17.

(b) A person described in subsection (a)(9) through (a)(18) is not excluded from the application of this article if:

- (1) the person performs an act that an Indiana statute does not authorize the person to perform; and
- (2) the act qualifies in whole or in part as the practice of medicine or osteopathic medicine.

(c) An employment or other contractual relationship between an entity described in subsection (a)(21) through (a)(22) and a licensed physician does not constitute the unlawful practice of medicine under this article if the entity does not direct or control independent medical acts, decisions, or judgment of the licensed physician. However, if the direction or control is done by the entity under IC 34-30-15 (or IC 34-4-12.6 before its repeal), the entity is excluded from the application of this article as it relates to the unlawful practice of medicine or osteopathic medicine.

(d) This subsection does not apply to a prescription or drug order for a legend drug that is filled or refilled in a pharmacy owned or operated by a hospital licensed under IC 16-21. A physician licensed in Indiana who permits or authorizes a person to fill or refill a prescription or drug order for a legend drug except as authorized in IC 16-42-19-11 through IC 16-42-19-19 is subject to disciplinary action under IC 25-1-9. A person who violates this subsection commits the unlawful practice of medicine under this chapter.

(e) A person described in subsection (a)(8) shall not be authorized to dispense contraceptives or birth control devices.

SECTION 2. IC 25-23-1-27.1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 27.1. (a) As used in this section, "licensed health professional" means:

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- 1 (1) a registered nurse;
- 2 (2) a licensed practical nurse;
- 3 (3) a physician with an unlimited license to practice medicine or
- 4 osteopathic medicine;
- 5 (4) a licensed dentist;
- 6 (5) a licensed chiropractor;
- 7 (6) a licensed optometrist;
- 8 (7) a licensed pharmacist;
- 9 (8) a licensed physical therapist;
- 10 (9) a licensed psychologist;
- 11 (10) a licensed podiatrist; or
- 12 (11) a licensed speech-language pathologist or audiologist.
- 13 (b) This chapter does not prohibit:
- 14 (1) furnishing nursing assistance in an emergency;
- 15 (2) the practice of nursing by any student enrolled in a board
- 16 approved nursing education program where such practice is
- 17 incidental to the student's program of study;
- 18 (3) the practice of any nurse who is employed by the government
- 19 of the United States or any of its bureaus, divisions, or agencies
- 20 while in the discharge of the nurse's official duties;
- 21 (4) the gratuitous care of sick, injured, or infirm individuals by
- 22 friends or the family of that individual;
- 23 (5) the care of the sick, injured, or infirm in the home for
- 24 compensation if the person assists only:
- 25 (A) with personal care;
- 26 (B) in the administration of a domestic or family remedy; or
- 27 (C) in the administration of a remedy that is ordered by a
- 28 licensed health professional and that is within the scope of
- 29 practice of the licensed health professional under Indiana law;
- 30 (6) performance of tasks by persons who provide health care
- 31 services which are delegated or ordered by licensed health
- 32 professionals, if the delegated or ordered tasks do not exceed the
- 33 scope of practice of the licensed health professionals under
- 34 Indiana law;
- 35 (7) a physician with an unlimited license to practice medicine or
- 36 osteopathic medicine in Indiana, a licensed dentist, chiropractor,
- 37 dental hygienist, optometrist, pharmacist, physical therapist,
- 38 podiatrist, psychologist, speech-language pathologist, or
- 39 audiologist from practicing the person's profession;
- 40 (8) a school corporation or school employee from acting under
- 41 IC 34-30-14;
- 42 (9) a personal services attendant from providing authorized

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1 attendant care services under IC 12-10-17; or
 2 (10) an attendant who provides attendant care services (as defined
 3 by ~~IC 16-27-1-0.5~~; in IC 16-18-2-28.5).

4 SECTION 3. IC 12-9-5-5 IS ADDED TO THE INDIANA CODE
 5 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 6 1, 2005]: **Sec. 5. Notwithstanding any other law:**

7 (1) home health agencies licensed under IC 16-27-1 are
 8 approved to provide home health services; and

9 (2) personal services agencies licensed under IC 16-27-4 are
 10 approved to provide personal services;

11 under any federal waiver granted to the state under 42 U.S.C. 1315
 12 or 42 U.S.C. 1396n.

13 SECTION 4. IC 16-18-2-28.5 IS AMENDED TO READ AS
 14 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 28.5. (a) "Attendant
 15 care services", for purposes of IC 16-27-1 ~~has the meaning set forth in~~
 16 ~~IC 16-27-1-0.5~~; and IC 16-27-4, means services:

17 (1) that could be performed by an impaired individual for
 18 whom the services are provided if the individual were not
 19 impaired; and

20 (2) that enable the impaired individual:

21 (A) to live in the individual's home and community rather
 22 than in an institution; and

23 (B) to carry out functions of daily living, self-care, and
 24 mobility.

25 (b) The term includes the following:

26 (1) Assistance in getting in and out of beds, wheelchairs, and
 27 motor vehicles.

28 (2) Assistance with routine bodily functions, including:

29 (A) bathing and personal hygiene;

30 (B) using the toilet;

31 (C) dressing and grooming; and

32 (D) feeding, including preparation and cleanup.

33 (3) The provision of assistance:

34 (A) through providing reminders or cues to take
 35 medication, the opening of preset medication containers,
 36 and providing assistance in the handling or ingesting of
 37 noncontrolled substance medications, including eye drops,
 38 herbs, supplements, and over-the-counter medications; and

39 (B) to an individual who is unable to accomplish the task
 40 due to an impairment and who is:

41 (i) competent and has directed the services; or

42 (ii) incompetent and has the services directed by a

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1 **competent individual who may consent to health care for**
 2 **the impaired individual.**

3 SECTION 5. IC 16-18-2-56.5 IS ADDED TO THE INDIANA
 4 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
 5 [EFFECTIVE JULY 1, 2005]: **Sec. 56.5. "Client", for purposes of**
 6 **IC 16-27-4, has the meaning set forth in IC 16-27-4-1.**

7 SECTION 6. IC 16-18-2-162 IS AMENDED TO READ AS
 8 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 162. (a) "Health care
 9 professional", for purposes of IC 16-27-1 **and IC 16-27-4**, has the
 10 meaning set forth in IC 16-27-1-1.

11 (b) "Health care professional", for purposes of IC 16-27-2, has the
 12 meaning set forth in IC 16-27-2-1.

13 SECTION 7. IC 16-18-2-266.5 IS ADDED TO THE INDIANA
 14 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
 15 [EFFECTIVE JULY 1, 2005]: **Sec. 266.5. "Parent personal services**
 16 **agency", for purposes of IC 16-27-4, has the meaning set forth in**
 17 **IC 16-27-4-2.**

18 SECTION 8. IC 16-18-2-277.6 IS ADDED TO THE INDIANA
 19 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
 20 [EFFECTIVE JULY 1, 2005]: **Sec. 277.6. "Personal representative",**
 21 **for purposes of IC 16-27-4, has the meaning set forth in**
 22 **IC 16-27-4-3.**

23 SECTION 9. IC 16-18-2-277.7 IS ADDED TO THE INDIANA
 24 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
 25 [EFFECTIVE JULY 1, 2005]: **Sec. 277.7. "Personal services", for**
 26 **purposes of IC 16-27-2 and IC 16-27-4, has the meaning set forth**
 27 **in IC 16-27-4-4.**

28 SECTION 10. IC 16-18-2-277.8 IS ADDED TO THE INDIANA
 29 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
 30 [EFFECTIVE JULY 1, 2005]: **Sec. 277.8. "Personal services**
 31 **agency", for purposes of IC 16-27-4, has the meaning set forth in**
 32 **IC 16-27-4-5.**

33 SECTION 11. IC 16-27-1-5 IS AMENDED TO READ AS
 34 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 5. (a) As used in this
 35 chapter, "home health services" means services that: ~~are:~~

36 (1) ~~are~~ provided to a patient by:

37 (A) a home health agency; or

38 (B) another person under an arrangement with a home health
 39 agency;

40 in the temporary or permanent residence of the patient; and

41 (2) **either, are required by law to be:**

42 (A) ordered by a licensed physician, a licensed dentist, a

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licensed chiropractor, a licensed podiatrist, or a licensed
 optometrist **for the service to be performed; or**
(B) performed only by a health care professional.

(b) The term includes the following:

- (1) Nursing treatment and procedures.
- (2) Physical therapy.
- (3) Occupational therapy.
- (4) Speech therapy.
- (5) Medical social services.
- (6) Home health aide services.
- (7) Other therapeutic services.

(c) The term does not apply to the following:

- (1) Services provided by a physician licensed under IC 25-22.5.
- (2) Incidental services provided by a licensed health facility to patients of the licensed health facility.
- (3) Services provided by employers or membership organizations using health care professionals for their employees, members, and families of the employees or members if the health or home care services are not the predominant purpose of the employer or a membership organization's business.
- (4) Nonmedical nursing care given in accordance with the tenets and practice of a recognized church or religious denomination to a patient who depends upon healing by prayer and spiritual means alone in accordance with the tenets and practices of the patient's church or religious denomination.
- (5) Services that are allowed to be performed by an attendant under IC 16-27-1-10.
- (6) Authorized services provided by a personal services attendant under IC 12-10-17.

SECTION 12. IC 16-27-1-7 IS AMENDED TO READ AS
 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 7. The state department
 shall adopt rules under IC 4-22-2 to do the following:

- (1) Protect the health, safety, and welfare of patients.
- (2) Govern the qualifications of applicants for licenses.
- (3) Govern the operating policies, supervision, and maintenance of service records of home health agencies.
- (4) Govern the procedure for issuing, renewing, denying, or revoking an annual license to a home health agency, including the following:
 - (A) The form and content of the license.
 - (B) The collection of an annual license fee of not more than two hundred **fifty** dollars ~~(\$200)~~ **(\$250)** that the state

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department may waive.

(5) Exempt persons who do not provide home health services under this chapter.

SECTION 13. IC 16-27-2-2.2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 2.2. As used in this chapter, "services" includes:

(1) home health services (as defined in IC 16-27-1-5); ~~and~~

(2) any services such as homemaker, companion, sitter, or handyman services provided by a home health agency in the temporary or permanent residence of a patient or client of the home health agency; **and**

(3) personal services.

SECTION 14. IC 16-27-2-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 3. (a) A person may not operate a home health agency **or a personal services agency** if the person has been convicted of any of the following:

(1) Rape (IC 35-42-4-1).

(2) Criminal deviate conduct (IC 35-42-4-2).

(3) Exploitation of an endangered adult (IC 35-46-1-12).

(4) Failure to report battery, neglect, or exploitation of an endangered adult (IC 35-46-1-13).

(5) Theft (IC 35-43-4), if the person's conviction for theft occurred less than ten (10) years before the date of submission by the person of an application for licensure as a home health agency under IC 16-27-1 **or as a personal services agency under IC 16-27-4.**

(b) A person who knowingly or intentionally violates this section commits a Class A misdemeanor.

SECTION 15. IC 16-27-2-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 4. (a) A person who operates a home health agency **under IC 16-27-1 or a personal services agency under IC 16-27-4** shall apply, not more than three (3) business days after the date that an employee begins to provide services in a patient's temporary or permanent residence, for a copy of the employee's limited criminal history from the Indiana central repository for criminal history information under IC 10-13-3.

(b) A home health agency **or personal services agency** may not employ a person to provide services in a patient's or client's temporary or permanent residence for more than three (3) business days without applying for that person's limited criminal history as required by subsection (a).

SECTION 16. IC 16-27-2-5 IS AMENDED TO READ AS

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1 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 5. (a) Except as
 2 provided in subsection (b), a person who operates a home health
 3 agency **under IC 16-27-1 or a personal services agency under**
 4 **IC 16-27-4** may not employ a person to provide services in a patient's
 5 or client's temporary or permanent residence if that person's limited
 6 criminal history indicates that the person has been convicted of any of
 7 the following:

- 8 (1) Rape (IC 35-42-4-1).
- 9 (2) Criminal deviate conduct (IC 35-42-4-2).
- 10 (3) Exploitation of an endangered adult (IC 35-46-1-12).
- 11 (4) Failure to report battery, neglect, or exploitation of an
 12 endangered adult (IC 35-46-1-13).
- 13 (5) Theft (IC 35-43-4), if the conviction for theft occurred less
 14 than ten (10) years before the person's employment application
 15 date.

16 (b) A home health agency **or personal services agency** may not
 17 employ a person to provide services in a patient's or client's temporary
 18 or permanent residence for more than twenty-one (21) calendar days
 19 without receipt of that person's limited criminal history required by
 20 section 4 of this chapter, unless the Indiana central repository for
 21 criminal history information under IC 10-13-3 is solely responsible for
 22 failing to provide the person's limited criminal history to the home
 23 health agency **or personal services agency** within the time required
 24 under this subsection.

25 SECTION 17. IC 16-27-2-6 IS AMENDED TO READ AS
 26 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 6. (a) A person who
 27 operates a home health agency **or a personal services agency under**
 28 **IC 16-27-4** is responsible for the payment of fees under IC 10-13-3-30
 29 and other fees required under section 4 of this chapter.

30 (b) A home health agency **or personal services agency** may require
 31 a person who applies to the home health agency **or personal services**
 32 **agency** for employment to provide services in a patient's or client's
 33 temporary or permanent residence:

- 34 (1) to pay the cost of fees described in subsection (a) to the home
 35 health agency **or personal services agency** at the time the person
 36 submits an application for employment; or
- 37 (2) to reimburse the home health agency **or personal services**
 38 **agency** for the cost of fees described in subsection (a).

39 SECTION 18. IC 16-27-2-7 IS AMENDED TO READ AS
 40 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 7. A person who:

- 41 (1) operates a home health agency **or personal services agency**;
- 42 and

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(2) violates section 4 or 5 of this chapter;
commits a Class A infraction.

SECTION 19. IC 16-27-4 IS ADDED TO THE INDIANA CODE
AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
JULY 1, 2005]:

Chapter 4. Licensure of Personal Services Agencies

Sec. 1. As used in this chapter, "client" means an individual who
has been accepted to receive personal services from a personal
services agency.

Sec. 2. As used in this chapter, "parent personal services
agency" means the personal services agency that develops and
maintains administrative and fiscal control over a branch office.

Sec. 3. As used in this chapter, "personal representative" means
a person who has legal authority to act on behalf of the client with
regard to the action to be taken.

Sec. 4. (a) As used in this chapter, "personal services" means:
(1) attendant care services;
(2) homemaker services that assist with or perform household
tasks, including housekeeping, shopping, laundry, meal
planning and preparation, and cleaning; and
(3) companion services that provide fellowship, care, and
protection for a client, including transportation, letter
writing, mail reading, and escort services;
that are provided to a client at the client's residence.

(b) The term does not apply to the following:

- (1) Incidental services provided by a licensed health facility to
patients of the licensed health facility.
- (2) Services provided by employers or membership
organizations for their employees, members, and families of
the employees or members if the services are not the
predominant purpose of the employer or the membership
organization's business.
- (3) Services that are allowed to be performed by a personal
services attendant under IC 12-10-17.
- (4) Services that require the order of a health care
professional for the services to be lawfully performed in
Indiana.
- (5) Assisted living Medicaid waiver services.
- (6) Services that are performed by a facility described in
IC 12-10-15.

Sec. 5. (a) As used in this chapter, "personal services agency"
means a person that provides or offers to provide a personal

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1 service for compensation, whether through the agency's own
2 employees or by arrangement with another person.

3 (b) The term does not include the following:

4 (1) An individual who provides personal services only to the
5 individual's family and to not more than three (3) individuals
6 per residence and not more than a total of seven (7)
7 individuals concurrently. As used in this subdivision, "family"
8 means the individual's spouse, child, parent, parent-in-law,
9 grandparent, grandchild, brother, brother-in-law, sister,
10 sister-in-law, aunt, aunt-in-law, uncle, uncle-in-law, niece, and
11 nephew.

12 (2) A local health department as described in IC 16-20 or
13 IC 16-22-8.

14 (3) A person that:

15 (A) is approved by the division of disability, aging, and
16 rehabilitative services to provide supported living services
17 or supported living support to individuals with
18 developmental disabilities;

19 (B) is subject to rules adopted under IC 12-11-2.1; and

20 (C) serves only individuals with developmental disabilities
21 who are in a placement authorized under IC 12-11-2.1-4.

22 Sec. 6. (a) To operate a personal services agency, a person must
23 obtain a license from the state health commissioner. A personal
24 services agency may not be opened, operated, managed,
25 maintained, or conduct business without a license from the state
26 department. Each parent personal services agency must obtain a
27 separate license.

28 (b) A parent personal services agency may maintain branch
29 offices that operate under the license of the parent personal
30 services agency. Each branch office must be:

31 (1) at a location or site from which the personal services
32 agency provides services;

33 (2) owned and controlled by the parent personal services
34 agency; and

35 (3) located within a radius of one hundred twenty (120) miles
36 of the parent personal services agency.

37 (c) A license is required for any personal services agency
38 providing services in Indiana. An out-of-state personal services
39 agency must be authorized by the secretary of state to conduct
40 business in Indiana and have a branch office in Indiana.

41 (d) Application for a license to operate a personal services
42 agency must be made on a form provided by the state department

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1 and must be accompanied by the payment of a fee of two hundred
2 fifty dollars (\$250). The application may not require any
3 information except as required under this chapter.

4 (e) After receiving a completed application that demonstrates
5 prima facie compliance with the requirements of this chapter and
6 the payment of the fee required by subsection (d), the state
7 department shall issue a license to the applicant to operate a
8 personal services agency. The state department may conduct an
9 onsite inspection in conjunction with the issuance of an initial
10 license or the renewal of a license.

11 (f) In the state department's consideration of:

- 12 (1) an application for licensure;
- 13 (2) an application for renewal of licensure;
- 14 (3) a complaint alleging noncompliance with the requirements
15 of this chapter; or
- 16 (4) an investigation conducted under section 7(a) of this
17 chapter;

18 the state department's onsite inspections in conjunction with those
19 actions are limited to determining the personal service agency's
20 compliance with the requirements of this chapter or permitting or
21 aiding an illegal act in a personal services agency.

22 (g) Subject to subsection (e), when conducting an onsite
23 inspection, the state department must receive all documents
24 necessary to determine the personal service agency's compliance
25 with the requirements of this chapter. A personal services agency
26 must produce documents requested by the state department
27 surveyor not less than twenty-four (24) hours after the documents
28 have been requested.

29 (h) A license expires one (1) year after the date of issuance of the
30 license under subsection (e). However, the state department may
31 issue an initial license for a period of less than one (1) year to
32 stagger the expiration dates. The licensee shall notify the state
33 department in writing at least thirty (30) days before closing or
34 selling the personal services agency.

35 (i) A personal services agency license may not be transferred or
36 assigned. Upon sale, assignment, lease, or other transfer, including
37 transfers that qualify as a change in ownership, the new owner or
38 person in interest must obtain a license from the state department
39 under this chapter before maintaining, operating, or conducting
40 the personal services agency.

41 (j) A home health agency licensed under IC 16-27-1 that
42 operates a personal services agency within the home health agency

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1 is subject to the requirements of this chapter. The requirements
 2 under IC 16-27-1 do not apply to a home health agency's personal
 3 services agency. The requirements under this chapter do not apply
 4 to a home health agency's operations. A home health agency that
 5 is licensed under IC 16-27-1 is not required to obtain a license
 6 under this chapter.

7 (k) If a person who is licensed to operate a personal services
 8 agency is also licensed to operate a home health agency under
 9 IC 16-27-1, an onsite inspection for renewal of the person's
 10 personal services agency license must, to the extent feasible, be
 11 conducted at the same time as an onsite inspection of the home
 12 health agency license.

13 Sec. 7. (a) The state department shall investigate a report of an
 14 unlicensed personal services agency operation and report its
 15 findings to the attorney general.

16 (b) The attorney general may do the following:

17 (1) Seek an injunction in the circuit or superior court of the
 18 county in which the unlicensed home health agency is located.

19 (2) Prosecute violations under section 23 of this chapter.

20 Sec. 8. (a) If a personal services agency is aware that the client's
 21 medical or health condition has become unstable or unpredictable,
 22 the personal services agency shall notify the client, the client's
 23 personal representative, a family member, other relative of the
 24 client, or other person identified by the client of the need for a
 25 referral for medical or health services. The notification may be
 26 given in writing or orally and must be documented in the client's
 27 record with the personal services agency.

28 (b) The personal services agency may continue to provide
 29 personal services for a client with an unstable or unpredictable
 30 medical or health condition but may not manage or represent itself
 31 as able to manage the client's medical or health condition.

32 Sec. 9. (a) A personal services agency shall employ an individual
 33 to act as the personal services agency's manager. The manager is
 34 responsible for the organization and daily operation of the personal
 35 services agency.

36 (b) The manager may designate in writing one (1) or more
 37 individuals to act on behalf of or to perform any or all of the
 38 responsibilities of the personal services agency's manager under
 39 this chapter.

40 Sec. 10. The personal services agency's manager or the
 41 manager's designee shall prepare a service plan for a client before
 42 providing personal services for the client. A permanent change to

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the service plan requires a written change to the service plan. The service plan must:

- (1) be in writing, dated, and signed by the individual who prepared it;
- (2) list the types and schedule of services to be provided; and
- (3) state that the services to be provided to the client are subject to the client's right to temporarily suspend, permanently terminate, temporarily add, or permanently add the provision of any service.

All permanent changes require a change in the written service plan. The service plan must be signed and dated by the client not later than fourteen (14) days after services begin for the client and not later than fourteen (14) days after any permanent change to the service plan.

Sec. 11. The personal services agency's manager or the manager's designee shall conduct a client satisfaction review with the client every seventy-six (76) to one hundred four (104) days to discuss the services being provided and to determine if any change in the plan of services should occur. The review with the client may be in person or by telephone. This client satisfaction review must:

- (1) be put in writing; and
- (2) be signed and dated by the individual conducting the review.

Sec. 12. The personal services agency shall provide the client or the client's personal representative with the personal services agency's written statement of client rights not more than seven (7) days after providing services to the client. The statement of client rights must include the following information:

- (1) The client has the right to have the client's property treated with respect.
- (2) The client has the right to temporarily suspend, permanently terminate, temporarily add, or permanently add services in the service plan.
- (3) The client has the right to file grievances regarding services furnished or regarding the lack of respect for property by the personal services agency and is not subject to discrimination or reprisal for filing a grievance.
- (4) The client has the right to be free from verbal, physical, and psychological abuse and to be treated with dignity.
- (5) A statement that it is not within the scope of the personal services agency's license to manage the medical and health conditions of the client if a condition becomes unstable or

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unpredictable.

(6) The charges for services provided by the personal services agency.

(7) The personal services agency's policy for notifying the client of any increase in the cost of services.

(8) The hours the personal services agency's office is open for business.

(9) That on request the personal services agency will make available to the client a written list of the names and addresses of all persons having at least a five percent (5%) ownership or controlling interest in the personal services agency.

(10) The procedures for contacting the personal services agency's manager, or the manager's designee, while the personal services agency's office is open or closed.

(11) The procedure and telephone number to call to file a complaint with the personal services agency.

(12) That the state department does not inspect personal service agencies as the part of the licensing process but does investigate complaints concerning personal service agencies.

(13) The procedure and telephone number to call to file a complaint with the state department along with the business hours of the state department.

Sec. 13. A personal services agency shall investigate a complaint made by a client, the client's family, or the client's personal representative regarding:

(1) service that is or fails to be furnished; and

(2) the lack of respect for the client's property by anyone furnishing services on behalf of the personal services agency.

The personal services agency shall document the complaint and the resolution of the complaint.

Sec. 14. The personal services agency's manager or the manager's designee shall be available to respond to client telephone calls twenty-four (24) hours a day.

Sec. 15. An employee or agent of a personal services agency who will have direct client contact must complete a tuberculosis test in the same manner as required by the state department for licensed home health agency employees and agents.

Sec. 16. (a) The competency of an employee or agent of a personal services agency who will perform attendant care services at the client's residence must be evaluated by the agency or the agency's designee for each attendant care services task that the

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1 personal services agency chooses to have that employee or agent
 2 perform. The agency has the sole discretion to determine if an
 3 employee or agent is competent to perform an attendant care
 4 services task.

5 (b) After an evaluation, an employee or agent shall be trained in
 6 the attendant care services tasks the personal services agency
 7 believes require improvement. The employee or agent shall be
 8 reevaluated following any training. The evaluation of the employee
 9 or agent and determination by the agency that the employee or
 10 agent is competent to perform the attendant care services task
 11 must occur before the employee or agent performs that task for a
 12 client without direct agency supervision.

13 (c) The content of the evaluation and training conducted under
 14 this section, including the date and the signature of the person
 15 conducting the evaluation and training, must be documented for
 16 each employee or agent who performs personal services.

17 Sec. 17. (a) Disclosure of ownership and management
 18 information must be made to the state department:

- 19 (1) at the time of the personal services agency's request for
 20 licensure;
- 21 (2) during each survey of the personal services agency; and
- 22 (3) when there is a change in the management or in an
 23 ownership interest of more than five percent (5%) of the
 24 personal services agency.

25 (b) The disclosure under subsection (a) must include the
 26 following:

- 27 (1) The name and address of all persons having at least five
 28 percent (5%) ownership or controlling interest in the personal
 29 services agency.
- 30 (2) The name and address of each person who is an officer, a
 31 director, a managing agent, or a managing employee of the
 32 personal services agency.
- 33 (3) The name and address of the person responsible for the
 34 management of the personal services agency.
- 35 (4) The name and address of the chief executive officer and
 36 the chairperson (or holder of the equivalent position) of the
 37 governing body that is responsible for the person identified
 38 under subdivision (3).

39 (c) The determination of an ownership interest and the
 40 percentage of an ownership interest under this chapter must be
 41 determined under 45 CFR 420.201 and 45 CFR 420.202, as in effect
 42 on July 1, 2005.

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1 **Sec. 18. A personal services agency shall document evidence of**
 2 **compliance with the requirements of this chapter and document**
 3 **services provided to clients. The documentation or copies of the**
 4 **documentation must be maintained or be electronically accessible**
 5 **at a personal services agency's office in Indiana for not less than**
 6 **seven (7) years.**

7 **Sec. 19. (a) The state health commissioner may take one (1) or**
 8 **more of the following actions on any ground listed in subsection**
 9 **(b):**

- 10 (1) Issue a probationary license.
- 11 (2) Conduct a resurvey.
- 12 (3) Deny renewal of a license.
- 13 (4) Revoke a license.
- 14 (5) Impose a civil penalty in an amount not to exceed one
- 15 thousand dollars (\$1,000).

16 **(b) The state health commissioner may take action under**
 17 **subsection (a) on any of the following grounds:**

- 18 (1) Violation of a provision of this chapter or a rule adopted
- 19 under this chapter.
- 20 (2) Permitting, aiding, or abetting the commission of an illegal
- 21 act in a personal services agency.
- 22 (c) IC 4-21.5 applies to an action under this section.

23 **Sec. 20. (a) The state department shall adopt rules under**
 24 **IC 4-22-2 to govern the procedure for the following:**

- 25 (1) Issuing, renewing, denying, or revoking a personal services
- 26 agency license.
- 27 (2) Investigating a complaint against a personal services
- 28 agency that alleges a violation of this chapter.
- 29 (3) Collecting fees required under this chapter.

30 **(b) The state department may not add to the substantive or**
 31 **procedural requirements in this chapter.**

32 **Sec. 21. A licensee or an applicant for a license aggrieved by an**
 33 **action under this chapter may request a review under IC 4-21.5.**

34 **Sec. 22. (a) In response to a request for review of an order**
 35 **referred to in subsection (c), the executive board shall appoint an**
 36 **appeals panel that consists of three (3) members as follows:**

- 37 (1) One (1) member of the executive board.
- 38 (2) One (1) attorney admitted to the practice of law in
- 39 Indiana.
- 40 (3) One (1) individual with qualifications determined by the
- 41 executive board.

42 **(b) An employee of the state department may not be a member**

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of the panel.

(c) The panel shall conduct proceedings for review of an order issued by an administrative law judge under this chapter. The panel is the ultimate authority under IC 4-21.5.

Sec. 23. A person who knowingly or intentionally:

(1) operates a personal services agency; or

(2) advertises the operation of a personal services agency; that is not licensed under this chapter commits a Class A misdemeanor.

SECTION 20. IC 22-1-5 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]:

Chapter 5. Home Care Consumers and Worker Protection

Sec. 1. As used in this chapter, "attendant care services" has the meaning set forth in IC 16-18-2-28.5.

Sec. 2. As used in this chapter, "companion type services" has the meaning set forth in IC 12-10-17-2(2).

Sec. 3. As used in this chapter, "consumer" means an individual who:

(1) receives home care services given by a home care services worker in the individual's residence; or

(2) pays for and directs the home care services for another individual.

Sec. 4. As used in this chapter, "consumer notice" means the notice described in section 14 of this chapter.

Sec. 5. As used in this chapter, "department" refers to the department of labor created under IC 22-1-1-1.

Sec. 6. As used in this chapter, "home care services" means skilled and unskilled services provided to an individual at the individual's residence to enable the individual to remain in the residence safely and comfortably. The provision of at least two (2) of the following is included in home care services:

(1) Nursing.

(2) Therapy.

(3) Attendant care.

(4) Companion type services.

(5) Homemaker services.

Sec. 7. As used in this chapter, "home care services worker" means an individual performing home care services for compensation.

Sec. 8. As used in this chapter, "homemaker services" means assistance with or performing household tasks that include

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housekeeping, shopping, laundry, meal planning and preparation, handyman services, and seasonal chores.

Sec. 9. As used in this chapter, "placement agency" means a person engaged in the business of securing home care services employment for an individual or securing a home care services worker for a consumer. The term:

(1) includes an employment agency, a nurse registry, and an entity that places a home care services worker for compensation by a consumer in the consumer's residence to provide home care services; and

(2) does not include a worker who solely and personally provides home care services to another individual at the residence of that individual.

Sec. 10. As used in this chapter, "skilled services" means services provided by a:

(1) registered nurse (as defined in IC 25-23-1-1.1(a));

(2) licensed practical nurse (as defined in IC 25-23-1-1.2); or

(3) health care professional listed in IC 16-27-1-1.

Sec. 11. As used in this chapter, "worker notice" means the statement described in section 17 of this chapter.

Sec. 12. This chapter applies to a placement agency, but does not apply to a:

(1) hospital (as defined in IC 16-18-2-179);

(2) health facility (as defined in IC 16-18-2-167(a)); or

(3) home health agency (as defined in IC 16-18-2-173).

Sec. 13. A placement agency:

(1) must provide a consumer with a consumer notice each time a home care services worker is placed in the home of the consumer; and

(2) is not required to provide a consumer notice when a new or different home care services worker is substituting for the regular home care services worker placed with the consumer.

Sec. 14. A consumer notice must include the following:

(1) The duties, responsibilities, and obligations of the placement agency to the:

(A) home care services worker; and

(B) consumer.

(2) A statement identifying the placement agency as:

(A) an employer;

(B) a joint employer;

(C) a leasing employer; or

(D) not an employer.

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(3) A statement that notwithstanding the employment status of the placement agency, the consumer:

(A) may be considered an employer under state and federal employment laws; and

(B) may be responsible for:

(i) payment of local, state, or federal employment taxes;

(ii) payment for Social Security and Medicare contributions;

(iii) ensuring payment of at least the minimum wage;

(iv) overtime payment;

(v) unemployment contributions under IC 22-4-11; or

(vi) worker's compensation insurance as required by IC 22-3-2-5 and IC 22-3-7-34;

of the home care services worker.

(4) The appropriate telephone number, address, and electronic mail address of the department for inquiries regarding the contents of the notice.

The department shall determine the content and format of the consumer notice.

Sec. 15. The failure of a placement agency to provide a consumer notice to the consumer at the time a home care services worker is placed in the consumer's home does not relieve a consumer from the duties or obligations as an employer. If a placement agency fails to provide a consumer notice and the consumer is liable for payment of wages, taxes, worker's compensation insurance premiums, or unemployment compensation employer contributions, the consumer has a right of indemnification against the placement agency, which includes the actual amounts paid to or on behalf of the home care services worker as well as the consumer's attorney's fees and costs.

Sec. 16. A placement agency that will not be the actual employer of the home care services worker shall provide a worker notice as set forth in section 17 of this chapter to a home care services worker who is placed with a consumer. The worker notice must:

(1) be provided to the home care services worker upon placement in the consumer's home; and

(2) specify the home care services worker's legal relationship with the placement agency and the consumer.

Sec. 17. The worker notice referred to in section 16 of this chapter must contain the following:

(1) The duties, responsibilities, and obligations of the placement agency, the consumer, and the home care services

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worker if the home care services worker is determined to be an independent contractor, including:

(A) a statement of the party responsible for the payment of the home care services worker's wages, taxes, Social Security and Medicare contributions, unemployment contributions, and worker's compensation insurance premiums; and

(B) a statement identifying the party responsible for the home care services worker's hiring, firing, discipline, day to day supervision, assignment of duties, and provision of equipment or materials for use by the home care services worker.

(2) The telephone number, address, and electronic mail address of the department for inquiries regarding the contents of the notice.

The department shall determine the content and format of the consumer notice.

Sec. 18. The department may at any time and upon receiving a complaint from an interested person investigate an alleged violation of this chapter by a placement agency.

Sec. 19. The department may impose a civil penalty not to exceed one thousand dollars (\$1,000) against a placement agency that fails to provide a worker notice or a consumer notice at the times required under section 13 or 16 of this chapter. The civil penalty may be assessed by the department and, if necessary, shall be recovered by the prosecuting attorney of the county in which the violation has occurred or by the attorney general, as provided in IC 22-1-1-18.

SECTION 21. IC 25-26-21 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]:

Chapter 21. Home Medical Equipment Services Providers

Sec. 1. As used in this chapter, "board" refers to the Indiana board of pharmacy established by IC 25-26-13-3.

Sec. 2. As used in this chapter, "home medical equipment" means technologically sophisticated medical devices that may be used in a residence, including the following:

- (1) Oxygen and oxygen delivery systems.
- (2) Ventilators.
- (3) Respiratory disease management devices.
- (4) Continuous positive airway pressure (CPAP) devices.
- (5) Electronic and computerized wheelchairs and seating

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systems.

(6) Apnea monitors.

(7) Transcutaneous electrical nerve stimulator (TENS) units.

(8) Low air loss cutaneous pressure management devices.

(9) Sequential compression devices.

(10) Feeding pumps.

(11) Home phototherapy devices.

(12) Infusion delivery devices.

(13) Distribution of medical gases to end users for human consumption.

(14) Hospital beds.

(15) Nebulizers.

(16) Other similar equipment determined by the board in rules adopted under section 7 of this chapter.

Sec. 3. As used in this chapter, "home medical equipment services" means the:

(1) sale;

(2) rental;

(3) delivery;

(4) installation;

(5) maintenance or replacement; or

(6) instruction in the use;

of medical equipment used by an individual that allows the individual to reside in a noninstitutional environment.

Sec. 4. As used in this chapter, "provider" means a person engaged in the business of providing home medical equipment services to an unrelated individual in the individual's residence.

Sec. 5. (a) This chapter does not apply to the following:

(1) A home health agency (as defined in IC 16-27-1-2) that does not sell, lease, or rent home medical equipment.

(2) A hospital licensed under IC 16-21-2 that:

(A) provides home medical equipment services only as an integral part of patient care; and

(B) does not provide home medical equipment services through a separate business entity.

(3) A manufacturer or wholesale distributor that does not sell, lease, or rent home medical equipment directly to a consumer.

(4) Except as provided under subsection (b), a practitioner (as defined in IC 25-1-9-2) who does not sell, lease, or rent home medical equipment.

(5) A veterinarian licensed under IC 15-5-1.1.

(6) A hospice program (as defined in IC 16-25-1.1-4) that does

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not sell, lease, or rent home medical equipment.

(7) A health facility licensed under IC 16-28 that does not sell, lease, or rent home medical equipment.

(8) A provider that:

(A) provides home medical equipment services within the scope of the licensed provider's professional practice;

(B) is otherwise licensed by the state; and

(C) receives annual continuing education that is documented by the provider or the licensing entity.

(9) An employee of a person licensed under this chapter.

(b) A pharmacist licensed in Indiana or a pharmacy that holds a permit issued under IC 25-26 that sells, leases, or rents home medical equipment:

(1) is not required to obtain a license under this chapter; and

(2) is otherwise subject to the:

(A) requirements of this chapter; and

(B) requirements established by the board by rule under this chapter.

Sec. 6. (a) A person seeking to provide home medical equipment services in Indiana shall apply to the board for a license in the manner prescribed by the board.

(b) A provider shall do the following:

(1) Comply with:

(A) federal and state law; and

(B) regulatory requirements;

for home medical equipment services.

(2) Maintain a physical facility and medical equipment inventory in Indiana.

(3) Purchase and maintain in an amount determined by the board:

(A) product liability insurance; and

(B) professional liability insurance;

and maintain proof of the insurance coverage.

(4) Establish procedures to ensure that an employee or a contractor of the provider who is engaged in the following home medical equipment activities receive annual training:

(A) Delivery.

(B) Orientation of a patient in the use of home medical equipment.

(C) Reimbursement assistance.

(D) Maintenance.

(E) Repair.

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(F) Cleaning and inventory control.

(G) Administration of home medical equipment services.

The provider shall maintain documentation of the annual training received by each employee or contractor.

(5) Maintain clinical records on a customer receiving home medical equipment services.

(6) Establish home medical equipment maintenance and personnel policies.

(7) Provide home medical equipment emergency maintenance services available twenty-four (24) hours a day.

(8) Comply with the rules adopted by the board under this chapter.

Sec. 7. (a) The board may adopt rules under IC 4-22-2 to do the following:

(1) Specify home medical equipment in addition to the home medical equipment set forth in section 2 of this chapter that is to be regulated under this chapter.

(2) Set standards for the licensure of providers.

(3) Govern the safety and quality of home medical equipment services that are provided to customers.

(4) Recognize accreditation organizations under section 9 of this chapter.

(5) Specify the amount of insurance coverage required under section 6(b)(3) of this chapter.

(6) Set reasonable fees for the application, issuance, and renewal of a license under this chapter and set other fees permitted under IC 25-1-8.

(b) The board may consult with individuals engaged in the home medical equipment services business to advise the board on the formulation of rules under subsection (a). The individuals may not be compensated or reimbursed for mileage by the board.

Sec. 8. (a) Except as provided in section 9 of this chapter, a provider must be licensed by the board before the provider may provide home medical equipment services. If a provider provides home medical equipment services from more than one (1) location in Indiana, the provider must obtain a license under this chapter for each location.

(b) An applicant shall submit the application to the board on a form adopted by the board. The nonrefundable application fee set by the board must be submitted with the application. The fee must be deposited in the state general fund.

(c) If the board determines that the applicant:

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1 (1) meets the standards set forth by the board; and
 2 (2) has satisfied the requirements under this chapter and the
 3 requirements established by the board by rule;
 4 the board shall notify the applicant in writing that the license is
 5 being issued to the applicant. The license is effective on the
 6 applicant's receipt of the written notification.

7 (d) A license issued under this chapter is effective for not more
 8 than two (2) years, beginning on a date determined by the board.
 9 An entity that is licensed under this chapter shall display the
 10 license or a copy of the license on the licensed premises.

11 (e) The board may renew a license every two (2) years.

12 Sec. 9. (a) An applicant for a license under this chapter may
 13 submit documents that show the applicant's accreditation through
 14 a national organization recognized by the board.

15 (b) The board shall issue a temporary license to an applicant
 16 under subsection (a) when the board:

17 (1) receives a copy of a valid accreditation letter from a
 18 national organization that the board has recognized by rule
 19 under section 7(a)(4) of this chapter; and

20 (2) has conducted an inspection under section 10 of this
 21 chapter in which the inspector determines that the applicant
 22 meets the inspection requirements.

23 Sec. 10. (a) The board may inspect the operations and facilities
 24 of an applicant for a license under this chapter to determine
 25 whether to issue the applicant a license.

26 (b) The board may conduct random inspections at any time for
 27 the following reasons:

28 (1) To ensure the integrity and effectiveness of the licensing
29 process.

30 (2) To investigate a consumer complaint or a complaint by a
31 qualified source as identified by the board.

32 (3) To ensure continuing compliance with the licensing
33 requirements under this chapter.

34 (c) The board shall provide the provider a report of the board's
 35 findings after the board completes an investigation under this
 36 section.

37 (d) A provider that disputes the report in subsection (c) may file
 38 an appeal under IC 4-21.5 with the board not later than thirty (30)
 39 days after receipt of the report. The board shall review the
 40 inspection report and, upon the provider's requests, conduct a new
 41 inspection.

42 (e) The board shall employ qualified inspectors to investigate

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1 complaints and conduct inspections. Investigators may review and
 2 audit records under an investigation or inspection during the
 3 inspected facility's normal business hours at the place of business
 4 of the provider being investigated.

5 (f) The board and the board's employees may not disclose
 6 confidential information obtained during an investigation except:

7 (1) during a disciplinary hearing held under section 11 of this
 8 chapter; or

9 (2) under a court order.

10 Sec. 11. The board may discipline the holder of a license under
 11 IC 25-1-9 after a hearing or for any of the following reasons:

12 (1) Violation of this chapter or violation of a rule established
 13 by the board.

14 (2) Violation of a board order.

15 (3) Failure to meet the standards set forth in section 6(b) of
 16 this chapter.

17 (4) The conviction or plea of guilty for a felony or
 18 misdemeanor that:

19 (A) involves fraud or deceit; or

20 (B) is directly related to providing home medical
 21 equipment services.

22 (5) Negligence or gross misconduct in providing home medical
 23 equipment services.

24 (6) The aid, assistance, or willful allowance of another person
 25 in violating a provision under this chapter or a rule adopted
 26 by the board.

27 (7) Failure to provide within sixty (60) days information in
 28 response to a written request from the board.

29 (8) The engagement in conduct that is likely to deceive,
 30 defraud, or harm the public.

31 (9) Denial, revocation, suspension, or restriction of a license
 32 in another state or jurisdiction to provide home medical
 33 equipment services for a reason other than the failure to
 34 renew the license.

35 (10) The receipt of a fee, commission, rebate, or other form of
 36 compensation for services not rendered.

37 (11) Knowingly making or filing false records, reports, or
 38 billings in the course of providing home medical equipment
 39 services, including false records, reports, or billings prepared
 40 for or submitted to state or federal agencies or departments.

41 (12) Failure to comply with federal rules issued under the
 42 federal Medicare program (42 U.S.C. 1395 et seq.) relating to

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operations, financial transactions, and general business practices of home medical equipment services providers.

Sec. 12. (a) A person engaging in the business of home medical equipment services who:

- (1) is required to be licensed under this chapter; and**
- (2) knowingly provides home medical equipment services without a license issued under this chapter;**

commits a Class A misdemeanor.

(b) Each day a violation of this section continues constitutes a separate offense.

(c) The board may, in the name of the state and through the attorney general, apply in a court to enjoin a person from providing home medical equipment services in violation of this chapter.

SECTION 22. IC 16-27-1-0.5 IS REPEALED [EFFECTIVE JULY 1, 2005].

SECTION 23. [EFFECTIVE JULY 1, 2005] (a) The definitions in IC 16-27-4, as added by this act, apply to this SECTION.

(b) Notwithstanding IC 16-27-4, as added by this act, a person is not required to be licensed by the state department of health to operate a personal services agency before January 1, 2006.

(c) This SECTION expires January 1, 2006.

SECTION 24. [EFFECTIVE JULY 1, 2005] (a) As used in this SECTION, "board" refers to the Indiana board of pharmacy established by IC 25-26-13-3.

(b) As used in this SECTION, "provider" has the meaning set forth in IC 25-26-21-4, as added by this act.

(c) A person engaged in providing home medical equipment services (as defined in IC 25-26-21-3, as added by this act) on June 30, 2005, and through June 30, 2006, is subject to inspection by the board for compliance with the standards set forth in IC 25-26-21, as added by this act.

(d) If, on the initial inspection under subsection (c), a provider who is accredited by a national organization passes the inspection, the board shall issue the provider a license under IC 25-26-21, as added by this act. If, on the initial inspection under subsection (c), a provider who is accredited by a national organization does not meet the inspection requirements, the board, after the adoption of rules under subsection (g) concerning the issuance of temporary licenses, shall issue the provider a temporary license for a period of twelve (12) months.

(e) When the board issues a temporary license under subsection

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1 (d), the board shall provide the provider in writing a list of the
2 areas of noncompliance.

3 (f) After the twelve (12) month period described in subsection
4 (d), the board shall conduct an inspection to determine whether the
5 provider is in compliance with the standards set forth in
6 IC 25-26-21, as added by this act. If the board determines that the
7 provider meets the standards, the board shall issue the provider a
8 license under IC 25-26-21, as added by this act. If the board
9 determines that the provider is not in compliance, the board shall
10 notify the provider in writing that the board is denying the
11 provider a license.

12 (g) The board may adopt rules under IC 4-22-2 necessary to
13 implement this SECTION.

14 (h) This SECTION expires December 31, 2008.

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COMMITTEE REPORT

Madam President: The Senate Committee on Health and Provider Services, to which was referred Senate Bill No. 206, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 2, line 36, delete "IC 25-1-11-2)" and insert "**IC 25-1-9-2)**".

Page 2, after line 42, begin a new line block indented and insert:

"(8) A provider that:

(A) provides home medical equipment services with the scope of the licensed provider's professional practice;

(B) is otherwise licensed by the state; and

(C) receives annual continuing education that is documented by the provider or the licensing entity.

(9) An employee of a person licensed under this chapter."

Page 3, line 1, after "pharmacy" insert "**that holds a permit issued under IC 25-26**".

Page 3, line 3, after "chapter;" insert "**and**".

Page 3, line 4, after "is" insert "**otherwise**".

Page 3, line 17, delete "on a site zoned for commercial use,".

Page 3, line 23, delete "personnel" and insert "**an employee or a contractor of the provider who is**".

Page 3, line 25, delete "education established by the board:" and insert "**education**".

Page 3, between lines 33 and 34, begin a new line block indented and insert:

"The provider shall maintain documentation of the continuing education received by each employee or contractor."

Page 4, line 27, delete "may" and insert "**must be deposited in the state general fund**".

Page 4, delete lines 28 through 29.

Page 4, line 38, after "board." insert "**An entity that is licensed under this chapter shall display the license or a copy of the license on the licensed premises**".

Page 5, between lines 17 and 18, begin a new line block indented and insert:

"(3) To ensure continuing compliance with the licensing requirements under this chapter."

Page 5, line 18, delete "send" and insert "**provide**".

Page 5, line 22, after "appeal" insert "**under IC 4-21.5**".

Page 6, line 2, delete "dishonesty;" and insert "**fraud or deceit**";.

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Page 7, line 12, delete "the provider shall be issued" and insert "**the board, after the adoption of rules under subsection (g) concerning the issuance of temporary licenses, shall issue the provider**".

Page 7, line 26, after "(g)" insert "**The board may adopt rules under IC 4-22-2 necessary to implement this SECTION. (h)**".

and when so amended that said bill do pass.

(Reference is to SB 206 as introduced.)

MILLER, Chairperson

Committee Vote: Yeas 9, Nays 0.

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SENATE MOTION

Madam President: I move that Senate Bill 206 be amended to read as follows:

Page 3, line 2, delete "with" and insert "**within**".

Page 3, line 33, delete "continuing" and insert "**training:**".

Page 3, delete line 34.

(Reference is to SB 206 as printed February 11, 2005.)

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Public Health, to which was referred Senate Bill 206, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 25-22.5-1-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 2. (a) This article, as it relates to the unlawful or unauthorized practice of medicine or osteopathic medicine, does not apply to any of the following:

(1) A student in training in a medical school approved by the board, or while performing duties as an intern or a resident in a hospital under the supervision of the hospital's staff or in a program approved by the medical school.

(2) A person who renders service in case of emergency where no fee or other consideration is contemplated, charged, or received.

(3) A paramedic (as defined in IC 16-18-2-266), an emergency medical technician-basic advanced (as defined in IC 16-18-2-112.5), an emergency medical technician-intermediate (as defined in IC 16-18-2-112.7), an emergency medical technician (as defined in IC 16-18-2-112), or a person with equivalent certification from another state who renders advanced life support (as defined in IC 16-18-2-7) or basic life support (as defined in IC 16-18-2-33.5):

(A) during a disaster emergency declared by the governor under IC 10-14-3-12 in response to an act that the governor in good faith believes to be an act of terrorism (as defined in IC 35-41-1-26.5); and

(B) in accordance with the rules adopted by the Indiana emergency medical services commission or the disaster emergency declaration of the governor.

(4) Commissioned medical officers or medical service officers of the armed forces of the United States, the United States Public Health Service, and medical officers of the United States Department of Veterans Affairs in the discharge of their official duties in Indiana.

(5) An individual who is not a licensee who resides in another state or country and is authorized to practice medicine or osteopathic medicine there, who is called in for consultation by an individual licensed to practice medicine or osteopathic medicine in Indiana.

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- (6) A person administering a domestic or family remedy to a member of the person's family.
- (7) A member of a church practicing the religious tenets of the church if the member does not make a medical diagnosis, prescribe or administer drugs or medicines, perform surgical or physical operations, or assume the title of or profess to be a physician.
- (8) A school corporation and a school employee who acts under IC 34-30-14 (or IC 34-4-16.5-3.5 before its repeal).
- (9) A chiropractor practicing the chiropractor's profession under IC 25-10 or to an employee of a chiropractor acting under the direction and supervision of the chiropractor under IC 25-10-1-13.
- (10) A dental hygienist practicing the dental hygienist's profession under IC 25-13.
- (11) A dentist practicing the dentist's profession under IC 25-14.
- (12) A hearing aid dealer practicing the hearing aid dealer's profession under IC 25-20.
- (13) A nurse practicing the nurse's profession under IC 25-23. However, a registered nurse may administer anesthesia if the registered nurse acts under the direction of and in the immediate presence of a physician and holds a certificate of completion of a course in anesthesia approved by the American Association of Nurse Anesthetists or a course approved by the board.
- (14) An optometrist practicing the optometrist's profession under IC 25-24.
- (15) A pharmacist practicing the pharmacist's profession under IC 25-26.
- (16) A physical therapist practicing the physical therapist's profession under IC 25-27.
- (17) A podiatrist practicing the podiatrist's profession under IC 25-29.
- (18) A psychologist practicing the psychologist's profession under IC 25-33.
- (19) A speech-language pathologist or audiologist practicing the pathologist's or audiologist's profession under IC 25-35.6.
- (20) An employee of a physician or group of physicians who performs an act, a duty, or a function that is customarily within the specific area of practice of the employing physician or group of physicians, if the act, duty, or function is performed under the direction and supervision of the employing physician or a physician of the employing group within whose area of practice the act, duty, or function falls. An employee may not make a

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diagnosis or prescribe a treatment and must report the results of an examination of a patient conducted by the employee to the employing physician or the physician of the employing group under whose supervision the employee is working. An employee may not administer medication without the specific order of the employing physician or a physician of the employing group. Unless an employee is licensed or registered to independently practice in a profession described in subdivisions (9) through (18), nothing in this subsection grants the employee independent practitioner status or the authority to perform patient services in an independent practice in a profession.

(21) A hospital licensed under IC 16-21 or IC 12-25.

(22) A health care organization whose members, shareholders, or partners are individuals, partnerships, corporations, facilities, or institutions licensed or legally authorized by this state to provide health care or professional services as:

- (A) a physician;
- (B) a psychiatric hospital;
- (C) a hospital;
- (D) a health maintenance organization or limited service health maintenance organization;
- (E) a health facility;
- (F) a dentist;
- (G) a registered or licensed practical nurse;
- (H) a midwife;
- (I) an optometrist;
- (J) a podiatrist;
- (K) a chiropractor;
- (L) a physical therapist; or
- (M) a psychologist.

(23) A physician assistant practicing the physician assistant's profession under IC 25-27.5.

(24) A physician providing medical treatment under IC 25-22.5-1-2.1.

(25) An attendant who provides care services (as defined in ~~IC 16-27-1-0.5~~; **IC 16-18-2-28.5**).

(26) A personal services attendant providing authorized attendant care services under IC 12-10-17.

(b) A person described in subsection (a)(9) through (a)(18) is not excluded from the application of this article if:

- (1) the person performs an act that an Indiana statute does not authorize the person to perform; and

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(2) the act qualifies in whole or in part as the practice of medicine or osteopathic medicine.

(c) An employment or other contractual relationship between an entity described in subsection (a)(21) through (a)(22) and a licensed physician does not constitute the unlawful practice of medicine under this article if the entity does not direct or control independent medical acts, decisions, or judgment of the licensed physician. However, if the direction or control is done by the entity under IC 34-30-15 (or IC 34-4-12.6 before its repeal), the entity is excluded from the application of this article as it relates to the unlawful practice of medicine or osteopathic medicine.

(d) This subsection does not apply to a prescription or drug order for a legend drug that is filled or refilled in a pharmacy owned or operated by a hospital licensed under IC 16-21. A physician licensed in Indiana who permits or authorizes a person to fill or refill a prescription or drug order for a legend drug except as authorized in IC 16-42-19-11 through IC 16-42-19-19 is subject to disciplinary action under IC 25-1-9. A person who violates this subsection commits the unlawful practice of medicine under this chapter.

(e) A person described in subsection (a)(8) shall not be authorized to dispense contraceptives or birth control devices.

SECTION 2. IC 25-23-1-27.1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 27.1. (a) As used in this section, "licensed health professional" means:

- (1) a registered nurse;
- (2) a licensed practical nurse;
- (3) a physician with an unlimited license to practice medicine or osteopathic medicine;
- (4) a licensed dentist;
- (5) a licensed chiropractor;
- (6) a licensed optometrist;
- (7) a licensed pharmacist;
- (8) a licensed physical therapist;
- (9) a licensed psychologist;
- (10) a licensed podiatrist; or
- (11) a licensed speech-language pathologist or audiologist.

(b) This chapter does not prohibit:

- (1) furnishing nursing assistance in an emergency;
- (2) the practice of nursing by any student enrolled in a board approved nursing education program where such practice is incidental to the student's program of study;
- (3) the practice of any nurse who is employed by the government

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of the United States or any of its bureaus, divisions, or agencies while in the discharge of the nurse's official duties;

(4) the gratuitous care of sick, injured, or infirm individuals by friends or the family of that individual;

(5) the care of the sick, injured, or infirm in the home for compensation if the person assists only:

(A) with personal care;

(B) in the administration of a domestic or family remedy; or

(C) in the administration of a remedy that is ordered by a licensed health professional and that is within the scope of practice of the licensed health professional under Indiana law;

(6) performance of tasks by persons who provide health care services which are delegated or ordered by licensed health professionals, if the delegated or ordered tasks do not exceed the scope of practice of the licensed health professionals under Indiana law;

(7) a physician with an unlimited license to practice medicine or osteopathic medicine in Indiana, a licensed dentist, chiropractor, dental hygienist, optometrist, pharmacist, physical therapist, podiatrist, psychologist, speech-language pathologist, or audiologist from practicing the person's profession;

(8) a school corporation or school employee from acting under IC 34-30-14;

(9) a personal services attendant from providing authorized attendant care services under IC 12-10-17; or

(10) an attendant who provides attendant care services (as defined by ~~IC 16-27-1-0.5~~; in **16-18-2-28.5**).

SECTION 3. IC 12-9-5-5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 5. Notwithstanding any other law:**

(1) home health agencies licensed under IC 16-27-1 are approved to provide home health services; and

(2) personal services agencies licensed under IC 16-27-4 are approved to provide personal services;

under any federal waiver granted to the state under 42 U.S.C. 1315 or 42 U.S.C. 1396n.

SECTION 4. IC 16-18-2-28.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 28.5. **(a)** "Attendant care services", for purposes of IC 16-27-1 ~~has the meaning set forth in IC 16-27-1-0.5~~; and **IC 16-27-4, means services:**

(1) that could be performed by an impaired individual for whom the services are provided if the individual were not

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impaired; and

(2) that enable the impaired individual:

(A) to live in the individual's home and community rather than in an institution; and

(B) to carry out functions of daily living, self-care, and mobility.

(b) The term includes the following:

(1) Assistance in getting in and out of beds, wheelchairs, and motor vehicles.

(2) Assistance with routine bodily functions, including:

(A) bathing and personal hygiene;

(B) using the toilet;

(C) dressing and grooming; and

(D) feeding, including preparation and cleanup.

(3) The provision of assistance:

(A) through providing reminders or cues to take medication, the opening of preset medication containers, and providing assistance in the handling or ingesting of noncontrolled substance medications, including eye drops, herbs, supplements, and over-the-counter medications; and

(B) to an individual who is unable to accomplish the task due to an impairment and who is:

(i) competent and has directed the services; or

(ii) incompetent and has the services directed by a competent individual who may consent to health care for the impaired individual.

SECTION 5. IC 16-18-2-56.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 56.5. "Client", for purposes of IC 16-27-4, has the meaning set forth in IC 16-27-4-1.**

SECTION 6. IC 16-18-2-162 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 162. (a) "Health care professional", for purposes of IC 16-27-1 and IC 16-27-4, has the meaning set forth in IC 16-27-1-1.**

(b) "Health care professional", for purposes of IC 16-27-2, has the meaning set forth in IC 16-27-2-1.

SECTION 7. IC 16-18-2-266.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 266.5. "Parent personal services agency", for purposes of IC 16-27-4, has the meaning set forth in IC 16-27-4-2.**

SECTION 8. IC 16-18-2-277.6 IS ADDED TO THE INDIANA

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CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 277.6. "Personal representative", for purposes of IC 16-27-4, has the meaning set forth in IC 16-27-4-3.**

SECTION 9. IC 16-18-2-277.7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 277.7. "Personal services", for purposes of IC 16-27-2 and IC 16-27-4, has the meaning set forth in IC 16-27-4-4.**

SECTION 10. IC 16-18-2-277.8 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 277.8. "Personal services agency", for purposes of IC 16-27-4, has the meaning set forth in IC 16-27-4-5.**

SECTION 11. IC 16-27-1-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 5. (a) As used in this chapter, "home health services" means services that: ~~are:~~

- (1) ~~are~~ provided to a patient by:
 - (A) a home health agency; or
 - (B) another person under an arrangement with a home health agency;
 in the temporary or permanent residence of the patient; and
- (2) ~~either, are required by law to be:~~
 - (A) ordered by a licensed physician, a licensed dentist, a licensed chiropractor, a licensed podiatrist, or a licensed optometrist **for the service to be performed; or**
 - (B) **performed only by a health care professional.**
- (b) The term includes the following:
 - (1) Nursing treatment and procedures.
 - (2) Physical therapy.
 - (3) Occupational therapy.
 - (4) Speech therapy.
 - (5) Medical social services.
 - (6) Home health aide services.
 - (7) Other therapeutic services.
- (c) The term does not apply to the following:
 - (1) Services provided by a physician licensed under IC 25-22.5.
 - (2) Incidental services provided by a licensed health facility to patients of the licensed health facility.
 - (3) Services provided by employers or membership organizations using health care professionals for their employees, members, and families of the employees or members if the health or home care

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services are not the predominant purpose of the employer or a membership organization's business.

(4) Nonmedical nursing care given in accordance with the tenets and practice of a recognized church or religious denomination to a patient who depends upon healing by prayer and spiritual means alone in accordance with the tenets and practices of the patient's church or religious denomination.

(5) Services that are allowed to be performed by an attendant under IC 16-27-1-10.

(6) Authorized services provided by a personal services attendant under IC 12-10-17.

SECTION 12. IC 16-27-1-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 7. The state department shall adopt rules under IC 4-22-2 to do the following:

- (1) Protect the health, safety, and welfare of patients.
- (2) Govern the qualifications of applicants for licenses.
- (3) Govern the operating policies, supervision, and maintenance of service records of home health agencies.
- (4) Govern the procedure for issuing, renewing, denying, or revoking an annual license to a home health agency, including the following:
 - (A) The form and content of the license.
 - (B) The collection of an annual license fee of not more than two hundred **fifty** dollars ~~(\$200)~~ **(\$250)** that the state department may waive.
- (5) Exempt persons who do not provide home health services under this chapter.

SECTION 13. IC 16-27-2-2.2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 2.2. As used in this chapter, "services" includes:

- (1) home health services (as defined in IC 16-27-1-5); ~~and~~
- (2) any services such as homemaker, companion, sitter, or handyman services provided by a home health agency in the temporary or permanent residence of a patient or client of the home health agency; **and**
- (3) personal services.**

SECTION 14. IC 16-27-2-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 3. (a) A person may not operate a home health agency **or a personal services agency** if the person has been convicted of any of the following:

- (1) Rape (IC 35-42-4-1).
- (2) Criminal deviate conduct (IC 35-42-4-2).

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- (3) Exploitation of an endangered adult (IC 35-46-1-12).
- (4) Failure to report battery, neglect, or exploitation of an endangered adult (IC 35-46-1-13).
- (5) Theft (IC 35-43-4), if the person's conviction for theft occurred less than ten (10) years before the date of submission by the person of an application for licensure as a home health agency under IC 16-27-1 **or as a personal services agency under IC 16-27-4.**

(b) A person who knowingly or intentionally violates this section commits a Class A misdemeanor.

SECTION 15. IC 16-27-2-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 4. (a) A person who operates a home health agency **under IC 16-27-1 or a personal services agency under IC 16-27-4** shall apply, not more than three (3) business days after the date that an employee begins to provide services in a patient's temporary or permanent residence, for a copy of the employee's limited criminal history from the Indiana central repository for criminal history information under IC 10-13-3.

(b) A home health agency **or personal services agency** may not employ a person to provide services in a patient's or client's temporary or permanent residence for more than three (3) business days without applying for that person's limited criminal history as required by subsection (a).

SECTION 16. IC 16-27-2-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 5. (a) Except as provided in subsection (b), a person who operates a home health agency **under IC 16-27-1 or a personal services agency under IC 16-27-4** may not employ a person to provide services in a patient's or client's temporary or permanent residence if that person's limited criminal history indicates that the person has been convicted of any of the following:

- (1) Rape (IC 35-42-4-1).
- (2) Criminal deviate conduct (IC 35-42-4-2).
- (3) Exploitation of an endangered adult (IC 35-46-1-12).
- (4) Failure to report battery, neglect, or exploitation of an endangered adult (IC 35-46-1-13).
- (5) Theft (IC 35-43-4), if the conviction for theft occurred less than ten (10) years before the person's employment application date.

(b) A home health agency **or personal services agency** may not employ a person to provide services in a patient's or client's temporary or permanent residence for more than twenty-one (21) calendar days

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without receipt of that person's limited criminal history required by section 4 of this chapter, unless the Indiana central repository for criminal history information under IC 10-13-3 is solely responsible for failing to provide the person's limited criminal history to the home health agency **or personal services agency** within the time required under this subsection.

SECTION 17. IC 16-27-2-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 6. (a) A person who operates a home health agency **or a personal services agency under IC 16-27-4** is responsible for the payment of fees under IC 10-13-3-30 and other fees required under section 4 of this chapter.

(b) A home health agency **or personal services agency** may require a person who applies to the home health agency **or personal services agency** for employment to provide services in a patient's or client's temporary or permanent residence:

- (1) to pay the cost of fees described in subsection (a) to the home health agency **or personal services agency** at the time the person submits an application for employment; or
- (2) to reimburse the home health agency **or personal services agency** for the cost of fees described in subsection (a).

SECTION 18. IC 16-27-2-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 7. A person who:

- (1) operates a home health agency **or personal services agency**; and
- (2) violates section 4 or 5 of this chapter;

commits a Class A infraction.

SECTION 19. IC 16-27-4 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]:

Chapter 4. Licensure of Personal Services Agencies

Sec. 1. As used in this chapter, "client" means an individual who has been accepted to receive personal services from a personal services agency.

Sec. 2. As used in this chapter, "parent personal services agency" means the personal services agency that develops and maintains administrative and fiscal control over a branch office.

Sec. 3. As used in this chapter, "personal representative" means a person who has legal authority to act on behalf of the client with regard to the action to be taken.

Sec. 4. (a) As used in this chapter, "personal services" means:

- (1) attendant care services;**
- (2) homemaker services that assist with or perform household**

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tasks, including housekeeping, shopping, laundry, meal planning and preparation, and cleaning; and

(3) companion services that provide fellowship, care, and protection for a client, including transportation, letter writing, mail reading, and escort services;

that are provided to a client at the client's residence.

(b) The term does not apply to the following:

(1) Incidental services provided by a licensed health facility to patients of the licensed health facility.

(2) Services provided by employers or membership organizations for their employees, members, and families of the employees or members if the services are not the predominant purpose of the employer or the membership organization's business.

(3) Services that are allowed to be performed by a personal services attendant under IC 12-10-17.

(4) Services that require the order of a health care professional for the services to be lawfully performed in Indiana.

(5) Assisted living Medicaid waiver services.

(6) Services that are performed by a facility described in IC 12-10-15.

Sec. 5. (a) As used in this chapter, "personal services agency" means a person that provides or offers to provide a personal service for compensation, whether through the agency's own employees or by arrangement with another person.

(b) The term does not include the following:

(1) An individual who provides personal services only to the individual's family and to not more than three (3) individuals per residence and not more than a total of seven (7) individuals concurrently. As used in this subdivision, "family" means the individual's spouse, child, parent, parent-in-law, grandparent, grandchild, brother, brother-in-law, sister, sister-in-law, aunt, aunt-in-law, uncle, uncle-in-law, niece, and nephew.

(2) A local health department as described in IC 16-20 or IC 16-22-8.

(3) A person that:

(A) is approved by the division of disability, aging, and rehabilitative services to provide supported living services or supported living support to individuals with developmental disabilities;

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- (B) is subject to rules adopted under IC 12-11-2.1; and
- (C) serves only individuals with developmental disabilities who are in a placement authorized under IC 12-11-2.1-4.

Sec. 6. (a) To operate a personal services agency, a person must obtain a license from the state health commissioner. A personal services agency may not be opened, operated, managed, maintained, or conduct business without a license from the state department. Each parent personal services agency must obtain a separate license.

(b) A parent personal services agency may maintain branch offices that operate under the license of the parent personal services agency. Each branch office must be:

- (1) at a location or site from which the personal services agency provides services;
- (2) owned and controlled by the parent personal services agency; and
- (3) located within a radius of one hundred twenty (120) miles of the parent personal services agency.

(c) A license is required for any personal services agency providing services in Indiana. An out-of-state personal services agency must be authorized by the secretary of state to conduct business in Indiana and have a branch office in Indiana.

(d) Application for a license to operate a personal services agency must be made on a form provided by the state department and must be accompanied by the payment of a fee of two hundred fifty dollars (\$250). The application may not require any information except as required under this chapter.

(e) After receiving a completed application that demonstrates prima facie compliance with the requirements of this chapter and the payment of the fee required by subsection (d), the state department shall issue a license to the applicant to operate a personal services agency. The state department may conduct an onsite inspection in conjunction with the issuance of an initial license or the renewal of a license.

(f) In the state department's consideration of:

- (1) an application for licensure;
- (2) an application for renewal of licensure;
- (3) a complaint alleging noncompliance with the requirements of this chapter; or
- (4) an investigation conducted under section 7(a) of this chapter;

the state department's onsite inspections in conjunction with those

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actions are limited to determining the personal service agency's compliance with the requirements of this chapter or permitting or aiding an illegal act in a personal services agency.

(g) Subject to subsection (e), when conducting an onsite inspection, the state department must receive all documents necessary to determine the personal service agency's compliance with the requirements of this chapter. A personal services agency must produce documents requested by the state department surveyor not less than twenty-four (24) hours after the documents have been requested.

(h) A license expires one (1) year after the date of issuance of the license under subsection (e). However, the state department may issue an initial license for a period of less than one (1) year to stagger the expiration dates. The licensee shall notify the state department in writing at least thirty (30) days before closing or selling the personal services agency.

(i) A personal services agency license may not be transferred or assigned. Upon sale, assignment, lease, or other transfer, including transfers that qualify as a change in ownership, the new owner or person in interest must obtain a license from the state department under this chapter before maintaining, operating, or conducting the personal services agency.

(j) A home health agency licensed under IC 16-27-1 that operates a personal services agency within the home health agency is subject to the requirements of this chapter. The requirements under IC 16-27-1 do not apply to a home health agency's personal services agency. The requirements under this chapter do not apply to a home health agency's operations. A home health agency that is licensed under IC 16-27-1 is not required to obtain a license under this chapter.

(k) If a person who is licensed to operate a personal services agency is also licensed to operate a home health agency under IC 16-27-1, an onsite inspection for renewal of the person's personal services agency license must, to the extent feasible, be conducted at the same time as an onsite inspection of the home health agency license.

Sec. 7. (a) The state department shall investigate a report of an unlicensed personal services agency operation and report its findings to the attorney general.

(b) The attorney general may do the following:

(1) Seek an injunction in the circuit or superior court of the county in which the unlicensed home health agency is located.

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(2) Prosecute violations under section 23 of this chapter.

Sec. 8. (a) If a personal services agency is aware that the client's medical or health condition has become unstable or unpredictable, the personal services agency shall notify the client, the client's personal representative, a family member, other relative of the client, or other person identified by the client of the need for a referral for medical or health services. The notification may be given in writing or orally and must be documented in the client's record with the personal services agency.

(b) The personal services agency may continue to provide personal services for a client with an unstable or unpredictable medical or health condition but may not manage or represent itself as able to manage the client's medical or health condition.

Sec. 9. (a) A personal services agency shall employ an individual to act as the personal services agency's manager. The manager is responsible for the organization and daily operation of the personal services agency.

(b) The manager may designate in writing one (1) or more individuals to act on behalf of or to perform any or all of the responsibilities of the personal services agency's manager under this chapter.

Sec. 10. The personal services agency's manager or the manager's designee shall prepare a service plan for a client before providing personal services for the client. A permanent change to the service plan requires a written change to the service plan. The service plan must:

- (1) be in writing, dated, and signed by the individual who prepared it;**
- (2) list the types and schedule of services to be provided; and**
- (3) state that the services to be provided to the client are subject to the client's right to temporarily suspend, permanently terminate, temporarily add, or permanently add the provision of any service.**

All permanent changes require a change in the written service plan. The service plan must be signed and dated by the client not later than fourteen (14) days after services begin for the client and not later than fourteen (14) days after any permanent change to the service plan.

Sec. 11. The personal services agency's manager or the manager's designee shall conduct a client satisfaction review with the client every seventy-six (76) to one hundred four (104) days to discuss the services being provided and to determine if any change

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in the plan of services should occur. The review with the client may be in person or by telephone. This client satisfaction review must:

- (1) be put in writing; and
- (2) be signed and dated by the individual conducting the review.

Sec. 12. The personal services agency shall provide the client or the client's personal representative with the personal services agency's written statement of client rights not more than seven (7) days after providing services to the client. The statement of client rights must include the following information:

- (1) The client has the right to have the client's property treated with respect.
- (2) The client has the right to temporarily suspend, permanently terminate, temporarily add, or permanently add services in the service plan.
- (3) The client has the right to file grievances regarding services furnished or regarding the lack of respect for property by the personal services agency and is not subject to discrimination or reprisal for filing a grievance.
- (4) The client has the right to be free from verbal, physical, and psychological abuse and to be treated with dignity.
- (5) A statement that it is not within the scope of the personal services agency's license to manage the medical and health conditions of the client if a condition becomes unstable or unpredictable.
- (6) The charges for services provided by the personal services agency.
- (7) The personal services agency's policy for notifying the client of any increase in the cost of services.
- (8) The hours the personal services agency's office is open for business.
- (9) That on request the personal services agency will make available to the client a written list of the names and addresses of all persons having at least a five percent (5%) ownership or controlling interest in the personal services agency.
- (10) The procedures for contacting the personal services agency's manager, or the manager's designee, while the personal services agency's office is open or closed.
- (11) The procedure and telephone number to call to file a complaint with the personal services agency.
- (12) That the state department does not inspect personal

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service agencies as the part of the licensing process but does investigate complaints concerning personal service agencies.

(13) The procedure and telephone number to call to file a complaint with the state department along with the business hours of the state department.

Sec. 13. A personal services agency shall investigate a complaint made by a client, the client's family, or the client's personal representative regarding:

(1) service that is or fails to be furnished; and

(2) the lack of respect for the client's property by anyone furnishing services on behalf of the personal services agency.

The personal services agency shall document the complaint and the resolution of the complaint.

Sec. 14. The personal services agency's manager or the manager's designee shall be available to respond to client telephone calls twenty-four (24) hours a day.

Sec. 15. An employee or agent of a personal services agency who will have direct client contact must complete a tuberculosis test in the same manner as required by the state department for licensed home health agency employees and agents.

Sec. 16. (a) The competency of an employee or agent of a personal services agency who will perform attendant care services at the client's residence must be evaluated by the agency or the agency's designee for each attendant care services task that the personal services agency chooses to have that employee or agent perform. The agency has the sole discretion to determine if an employee or agent is competent to perform an attendant care services task.

(b) After an evaluation, an employee or agent shall be trained in the attendant care services tasks the personal services agency believes require improvement. The employee or agent shall be reevaluated following any training. The evaluation of the employee or agent and determination by the agency that the employee or agent is competent to perform the attendant care services task must occur before the employee or agent performs that task for a client without direct agency supervision.

(c) The content of the evaluation and training conducted under this section, including the date and the signature of the person conducting the evaluation and training, must be documented for each employee or agent who performs personal services.

Sec. 17. (a) Disclosure of ownership and management information must be made to the state department:

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- (1) at the time of the personal services agency's request for licensure;
- (2) during each survey of the personal services agency; and
- (3) when there is a change in the management or in an ownership interest of more than five percent (5%) of the personal services agency.

(b) The disclosure under subsection (a) must include the following:

- (1) The name and address of all persons having at least five percent (5%) ownership or controlling interest in the personal services agency.
- (2) The name and address of each person who is an officer, a director, a managing agent, or a managing employee of the personal services agency.
- (3) The name and address of the person responsible for the management of the personal services agency.
- (4) The name and address of the chief executive officer and the chairperson (or holder of the equivalent position) of the governing body that is responsible for the person identified under subdivision (3).

(c) The determination of an ownership interest and the percentage of an ownership interest under this chapter must be determined under 45 CFR 420.201 and 45 CFR 420.202, as in effect on July 1, 2005.

Sec. 18. A personal services agency shall document evidence of compliance with the requirements of this chapter and document services provided to clients. The documentation or copies of the documentation must be maintained or be electronically accessible at a personal services agency's office in Indiana for not less than seven (7) years.

Sec. 19. (a) The state health commissioner may take one (1) or more of the following actions on any ground listed in subsection (b):

- (1) Issue a probationary license.
- (2) Conduct a resurvey.
- (3) Deny renewal of a license.
- (4) Revoke a license.
- (5) Impose a civil penalty in an amount not to exceed one thousand dollars (\$1,000).

(b) The state health commissioner may take action under subsection (a) on any of the following grounds:

- (1) Violation of a provision of this chapter or a rule adopted

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under this chapter.

(2) Permitting, aiding, or abetting the commission of an illegal act in a personal services agency.

(c) IC 4-21.5 applies to an action under this section.

Sec. 20. (a) The state department shall adopt rules under IC 4-22-2 to govern the procedure for the following:

(1) Issuing, renewing, denying, or revoking a personal services agency license.

(2) Investigating a complaint against a personal services agency that alleges a violation of this chapter.

(3) Collecting fees required under this chapter.

(b) The state department may not add to the substantive or procedural requirements in this chapter.

Sec. 21. A licensee or an applicant for a license aggrieved by an action under this chapter may request a review under IC 4-21.5.

Sec. 22. (a) In response to a request for review of an order referred to in subsection (c), the executive board shall appoint an appeals panel that consists of three (3) members as follows:

(1) One (1) member of the executive board.

(2) One (1) attorney admitted to the practice of law in Indiana.

(3) One (1) individual with qualifications determined by the executive board.

(b) An employee of the state department may not be a member of the panel.

(c) The panel shall conduct proceedings for review of an order issued by an administrative law judge under this chapter. The panel is the ultimate authority under IC 4-21.5.

Sec. 23. A person who knowingly or intentionally:

(1) operates a personal services agency; or

(2) advertises the operation of a personal services agency;

that is not licensed under this chapter commits a Class A misdemeanor.

SECTION 20. IC 22-1-5 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]:

Chapter 5. Home Care Consumers and Worker Protection

Sec. 1. As used in this chapter, "attendant care services" has the meaning set forth in IC 16-18-2-28.5.

Sec. 2. As used in this chapter, "companion type services" has the meaning set forth in IC 12-10-17-2(2).

Sec. 3. As used in this chapter, "consumer" means an individual

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who:

- (1) receives home care services given by a home care services worker in the individual's residence; or
- (2) pays for and directs the home care services for another individual.

Sec. 4. As used in this chapter, "consumer notice" means the notice described in section 14 of this chapter.

Sec. 5. As used in this chapter, "department" refers to the department of labor created under IC 22-1-1-1.

Sec. 6. As used in this chapter, "home care services" means skilled and unskilled services provided to an individual at the individual's residence to enable the individual to remain in the residence safely and comfortably. The provision of at least two (2) of the following is included in home care services:

- (1) Nursing.
- (2) Therapy.
- (3) Attendant care.
- (4) Companion type services.
- (5) Homemaker services.

Sec. 7. As used in this chapter, "home care services worker" means an individual performing home care services for compensation.

Sec. 8. As used in this chapter, "homemaker services" means assistance with or performing household tasks that include housekeeping, shopping, laundry, meal planning and preparation, handyman services, and seasonal chores.

Sec. 9. As used in this chapter, "placement agency" means a person engaged in the business of securing home care services employment for an individual or securing a home care services worker for a consumer. The term:

- (1) includes an employment agency, a nurse registry, and an entity that places a home care services worker for compensation by a consumer in the consumer's residence to provide home care services; and
- (2) does not include a worker who solely and personally provides home care services to another individual at the residence of that individual.

Sec. 10. As used in this chapter, "skilled services" means services provided by a:

- (1) registered nurse (as defined in IC 25-23-1-1.1(a));
- (2) licensed practical nurse (as defined in IC 25-23-1-1.2); or
- (3) health care professional listed in IC 16-27-1-1.

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Sec. 11. As used in this chapter, "worker notice" means the statement described in section 17 of this chapter.

Sec. 12. This chapter applies to a placement agency, but does not apply to a:

- (1) hospital (as defined in IC 16-18-2-179);
- (2) health facility (as defined in IC 16-18-2-167(a)); or
- (3) home health agency (as defined in IC 16-18-2-173).

Sec. 13. A placement agency:

- (1) must provide a consumer with a consumer notice each time a home care services worker is placed in the home of the consumer; and
- (2) is not required to provide a consumer notice when a new or different home care services worker is substituting for the regular home care services worker placed with the consumer.

Sec. 14. A consumer notice must include the following:

- (1) The duties, responsibilities, and obligations of the placement agency to the:
 - (A) home care services worker; and
 - (B) consumer.
- (2) A statement identifying the placement agency as:
 - (A) an employer;
 - (B) a joint employer;
 - (C) a leasing employer; or
 - (D) not an employer.
- (3) A statement that notwithstanding the employment status of the placement agency, the consumer:
 - (A) may be considered an employer under state and federal employment laws; and
 - (B) may be responsible for:
 - (i) payment of local, state, or federal employment taxes;
 - (ii) payment for Social Security and Medicare contributions;
 - (iii) ensuring payment of at least the minimum wage;
 - (iv) overtime payment;
 - (v) unemployment contributions under IC 22-4-11; or
 - (vi) worker's compensation insurance as required by IC 22-3-2-5 and IC 22-3-7-34;
- (4) The appropriate telephone number, address, and electronic mail address of the department for inquiries regarding the contents of the notice.

The department shall determine the content and format of the

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consumer notice.

Sec. 15. The failure of a placement agency to provide a consumer notice to the consumer at the time a home care services worker is placed in the consumer's home does not relieve a consumer from the duties or obligations as an employer. If a placement agency fails to provide a consumer notice and the consumer is liable for payment of wages, taxes, worker's compensation insurance premiums, or unemployment compensation employer contributions, the consumer has a right of indemnification against the placement agency, which includes the actual amounts paid to or on behalf of the home care services worker as well as the consumer's attorney's fees and costs.

Sec. 16. A placement agency that will not be the actual employer of the home care services worker shall provide a worker notice as set forth in section 17 of this chapter to a home care services worker who is placed with a consumer. The worker notice must:

- (1) be provided to the home care services worker upon placement in the consumer's home; and
- (2) specify the home care services worker's legal relationship with the placement agency and the consumer.

Sec. 17. The worker notice referred to in section 16 of this chapter must contain the following:

- (1) The duties, responsibilities, and obligations of the placement agency, the consumer, and the home care services worker if the home care services worker is determined to be an independent contractor, including:

- (A) a statement of the party responsible for the payment of the home care services worker's wages, taxes, Social Security and Medicare contributions, unemployment contributions, and worker's compensation insurance premiums; and

- (B) a statement identifying the party responsible for the home care services worker's hiring, firing, discipline, day to day supervision, assignment of duties, and provision of equipment or materials for use by the home care services worker.

- (2) The telephone number, address, and electronic mail address of the department for inquiries regarding the contents of the notice.

The department shall determine the content and format of the consumer notice.

Sec. 18. The department may at any time and upon receiving a

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complaint from an interested person investigate an alleged violation of this chapter by a placement agency.

Sec. 19. The department may impose a civil penalty not to exceed one thousand dollars (\$1,000) against a placement agency that fails to provide a worker notice or a consumer notice at the times required under section 13 or 16 of this chapter. The civil penalty may be assessed by the department and, if necessary, shall be recovered by the prosecuting attorney of the county in which the violation has occurred or by the attorney general, as provided in IC 22-1-1-18."

Page 3, line 42, delete "continuing" and insert "annual training".

Page 4, line 1, delete "education".

Page 7, line 6, after "violation" insert "of this section".

Page 7, between lines 10 and 11, begin a new paragraph and insert:
"SECTION 21. IC 16-27-1-0.5 IS REPEALED [EFFECTIVE JULY 1, 2005].

SECTION 22. [EFFECTIVE JULY 1, 2005] (a) The definitions in IC 16-27-4, as added by this act, apply to this SECTION.

(b) Notwithstanding IC 16-27-4, as added by this act, a person is not required to be licensed by the state department of health to operate a personal services agency before January 1, 2006.

(c) This SECTION expires January 1, 2006."

Page 7, line 17, delete "business".

Re-number all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 206 as reprinted February 16, 2005.)

BECKER, Chair

Committee Vote: yeas 11, nays 0.

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